

diction that amendment of the certification as requested will produce confusion is without evidentiary support. Inasmuch as insufficient cause has been shown why the Board should not amend the certification to reflect the new name of the Intervenor, the certified organization, we shall grant the motion to amend herein.

[The Board amended the certification of representatives issued to The Procter & Gamble Employees' Independent Union by substituting therein "Independent Oil and Chemical Workers of Dallas" for "The Procter & Gamble Employees' Independent Union."]

MEMBERS RODGERS and FANNING took no part in the consideration of the above Order Amending Certification of Representatives.

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**American Sugar Refining Company, Chalmette Refinery and Local 1101, United Packinghouse Workers of America, AFL-CIO.** *Case No. 15-CA-1734. February 23, 1961*

#### DECISION AND ORDER

On September 22, 1960, Trial Examiner Owsley Vose issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Fanning and Kimball].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the following modification.

For the reasons indicated in the Intermediate Report, we find, as did the Trial Examiner, that the Respondent violated Section 8(a) (5) and (1) of the Act by refusing, in February 1960, to furnish the Union with the then existing job descriptions of the job classifications in the appropriate unit herein. These job descriptions are known as the 1954 job descriptions. The Trial Examiner recommended that the Respondent be required, among other things, to furnish the Union with the 1954 job descriptions. Respondent contends that these job descriptions contained inaccuracies. In the interim between March 1960, on a date following the filing of the charge herein, and the date

of the hearing herein, the Respondent took steps to revise the 1954 job descriptions, furnished the Union with new descriptions of most of the job classifications in question, and indicated that it would furnish the balance of the job descriptions upon completion of the revisions. In view thereof, we find that it will effectuate the policies of the Act to require only that the Respondent furnish, upon request, to the Union all job descriptions not yet furnished, whether new or 1954 job descriptions depending on which is then available.

### ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, American Sugar Refining Company, Chalmette Refinery, Arabi, Louisiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain collectively with local 1101, United Packinghouse Workers of America, AFL-CIO, the certified bargaining representative of all hourly paid employees, excluding machine shop employees represented by Lodge No. 37, International Association of Machinists, at the Chalmette Refinery, by refusing to furnish said certified bargaining representative with job descriptions or other relevant data and information necessary to the performance of its functions as the exclusive bargaining representative of said employees.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, furnish Local 1101, United Packinghouse Workers of America, AFL-CIO, with copies of all job descriptions in the appropriate unit not already furnished, whether new or 1954 job descriptions, depending upon which is then available.

(b) Post at its Chalmette Refinery, copies of the notice attached hereto marked "Appendix."<sup>1</sup> Copies of the said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fifteenth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>1</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

## APPENDIX

## NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Local 1101, United Packinghouse Workers of America, AFL-CIO, as the exclusive bargaining representative of our employees in the appropriate unit by failing and refusing to furnish said exclusive bargaining representative with job descriptions for all job classifications in the appropriate unit. The appropriate bargaining unit is:

All the hourly paid employees at our Chalmette Refinery, Arabi, Louisiana, excluding machine shop employees represented by Lodge No. 37, International Association of Machinists, guards, watchmen, and all supervisory employees as defined in the Act.

WE WILL furnish said representative, upon request, with copies of all job descriptions, in the appropriate unit, that have not already been furnished said representative, whether new or 1954 job descriptions, depending upon which is then available.

AMERICAN SUGAR REFINING COMPANY,  
CHALMETTE REFINERY,

*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## INTERMEDIATE REPORT

## STATEMENT OF THE CASE

This proceeding, in which all parties were represented, was heard before me in New Orleans, Louisiana, on June 6, 1960, upon the complaint of the General Counsel and answer of American Sugar Refining Company, herein called the Respondent. The issue litigated at the hearing was whether the Respondent has refused to bargain collectively with Local 1101, United Packinghouse Workers of America, AFL-CIO, hereinafter called the Union, in violation of Section 8(a)(5) and (1) of the National Labor Relations Act, by reason of its refusal to furnish the Union with existing job descriptions covering the job classifications in the bargaining unit. Counsel for the General Counsel and the Respondent have filed helpful briefs with the Trial Examiner which have been fully considered.

Upon the entire record, and my observation of the witnesses, I hereby make the following:

## FINDINGS AND CONCLUSIONS

## I. JURISDICTIONAL STATEMENT

The Respondent, a New Jersey corporation having its principal office at New York, New York, operates refineries in various States, including its Chalmette Re-

finery at Arabi, Louisiana, at which it is engaged in the manufacture, sale, and distribution of sugar and related products. In 1959, the Respondent processed at its Chalmette Refinery in excess of \$100,000 worth of raw sugar and other materials obtained from out-of-State sources. During this same period the Respondent shipped from its Chalmette Refinery to out-of-State destinations finished products valued in excess of \$100,000. Admittedly, the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

Local 1101, United Packinghouse Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. Background

The Union has represented the employees of the Chalmette Refinery since 1941. In 1954 the Board's Regional Director at New Orleans, Louisiana, after a secret ballot election conducted under his supervision, certified the Union as the exclusive bargaining representative of all the Chalmette Refinery employees, excepting certain groups of employees including machine shop employees, guards, watchmen, and supervisory employees.<sup>1</sup> The Respondent and the Union are presently parties to a collective-bargaining agreement which is effective until February 1, 1962. This agreement covers in excess of 180 active job classifications and provides specified rates of pay for each classification.

For several years prior to the execution of this agreement the Union, in discussions with the Respondent, had been requesting the Respondent to furnish it with job descriptions covering the various job classifications in the appropriate unit. The Respondent has had job descriptions since the years of World War II when they were prepared for use in submissions to the National War Labor Board. In 1954 new job descriptions were prepared. They were prepared on a standardized form which contained spaces for describing, in addition to the various tasks involved, the skills required, the responsibilities of the job, the physical demands, and the working conditions of the job. These forms, after being completed, were not given to the Union and were not used in bargaining negotiations.

Since 1954, as new jobs were established, new job descriptions were prepared in most instances. Copies of these new job descriptions were furnished the Union. Occasionally, in connection with grievance discussions, the Respondent would grant the Union's request that it be furnished with the job description involved. At other times, the Respondent, although referring to a notebook containing job descriptions and reading from them, would not give them to the Union. At the hearing, Walter G. Allee, Jr., the Respondent's personnel manager, testified that when the Respondent had a job description which was up-to-date and accurate, it would comply with the Union's request to furnish it, otherwise it would not. As a result of various discussions with the Respondent, the Union has accumulated the descriptions of from 25 to 30 jobs, according to the credited testimony of James H. Chambers, a member of the Union's bargaining committee. This number, I find, includes the new and up-to-date descriptions furnished the Union in connection with discussions for the rates to be set for newly established positions.

The negotiations for the present agreement took place from January through March 1959. One of the Union's many demands at the beginning of the negotiations was that the Respondent furnish it with a complete set of job descriptions. The agreement which was signed, however, contained no provision for the supplying of such documents. The Union, accepting the Respondent's assurances that the job descriptions "were in the process and that we would get them as soon as they were finished," dropped its demand for the inclusion of the job description provision in the agreement.<sup>2</sup>

<sup>1</sup> There is no issue in this case as to the appropriateness of the bargaining unit or the Union's majority status therein, as the Respondent in its answer admits these allegations of the complaint.

<sup>2</sup> This is Union Committeeman Chambers' testimony. Although earlier in his testimony Chambers testified that the Respondent's representative informed him that the job descriptions were already written and in the New York office awaiting approval, I find in accordance with the testimony quoted in the text above, which is borne out by the testimony of Personnel Manager Allee concerning this matter, that the Union accepted the Respondent's statement that the job descriptions would be furnished as soon as they were completed.

*B. The Respondent's refusal to furnish existing job descriptions*

In grievance proceedings which culminated in a hearing before an arbitrator in December 1959, the Union repeatedly requested that it be furnished with the pertinent job descriptions, but to no avail. The Union renewed its request before the arbitrator. The Respondent, while not objecting to the furnishing of accurate job descriptions when available, took the position that the ones sought in the arbitration proceeding were not accurate, and hence urged that it should not be required to supply them. The arbitrator overruled the objection and the job descriptions in question were subsequently furnished under protest.

During the month of February 1960, a series of meetings were held between Respondent and the Union in an attempt to dispose of a large number of grievances. At one of these sessions, Chambers, the spokesman for the Union, again requested that job descriptions be made available. According to Chambers' undenied and credited testimony—

. . . during the discussion I pointblank asked him [Kovar, the Respondent's attorney] were we going to get a copy of the job descriptions that the company had and the company definitely has a book of job descriptions that thick because I have seen them with my two eyes, and I asked Mr. Kovar would the company give us a copy of the then existing job descriptions and he told me "No".

\* \* \* \* \*

. . . He said that the descriptions on hand were antiquated and ineffectual and the union didn't have any business with them. They were company property.

Chambers informed Attorney Kovar that he would use every means at his disposal to obtain the job descriptions, asserting that they were "vitaly important to him in the performance of his duties as a representative of the Union."

Chambers explained at the hearing that in many instances he was handicapped in discussions of wage rates for new or combined jobs and in discussions of grievances, as well, by the lack of job descriptions. With regard to the latter, Chambers testified that without job descriptions he was unable to determine on occasion whether an employee had a legitimate grievance or not. Chambers cited the grievance of an electrician's helper who was assigned to perform the electrician's duties while the latter was away on vacation, but without being given the higher electrician's rate of pay, which was required by the provisions of the current contract. According to Chambers, had the Union been in possession of the job descriptions of the two jobs, the controversy probably could have been resolved without resorting to expensive and bothersome arbitration proceedings.

*C. The filing of the charge on March 2; subsequent developments*

On March 2, 1960, Chambers, on behalf of the Union, filed a charge with the Board's New Orleans Regional Office alleging in substance that the Respondent was violating Section 8(a)(5) and (1) of the Act by refusing to comply with the Union's request for copies of job descriptions. The charge was served on the Respondent on March 3. About March 7, the Respondent hired an employee to work full time preparing job descriptions for the Chalmette Refinery. By the time of the hearing in this case in June, 134 job descriptions had been prepared and turned over to the Union. It was estimated at the hearing by Personnel Manager Allee that the remaining new job descriptions would be completed in 3 or 4 weeks.

*D. Conclusions*

The Respondent does not dispute the fact that it refused to supply the Union with its 1954 job descriptions when requested to do so by the Union in grievance sessions in February 1960. Nor does the Respondent contest its legal obligation to furnish the Union with any accurate job descriptions in its possession which may become relevant either in bargaining negotiations or needed by the Union in administering the provisions of the current agreement. The Respondent in effect recognizes that the Act requires an employer to furnish the exclusive bargaining representative of his employees, upon proper request, with information affecting the employer-employee relationship, to assist him not only in carrying out his bargaining functions but also to aid him in administering and policing the provisions of an existing contract. Among the various categories of information required to be supplied, such as names of employees, job classifications, wage rates, hours worked,

seniority standings,<sup>3</sup> and time studies and job evaluation data,<sup>4</sup> is information concerning the nature of the employees' jobs or job descriptions, *Aluminum Ore Company*, 39 NLRB 1286, 1296-1297, enfd. 131 F. 2d 485, 487 (C.A. 7). See also *Oregon Coast Operators Association* case, *supra*, 113 NLRB 1338, at 1345. Information regarding these matters which are essential to the bargaining agent's intelligent representation of the employees in the appropriate unit "must be disclosed unless it appears plainly irrelevant." *N.L.R.B. v. Yawman & Erbe Manufacturing Co.*, 187 F. 2d 947, 949 (C.A. 2), enfg. 89 NLRB 881.

While not disputing the fundamental proposition that relevant information concerning the various matters discussed in the preceding paragraph generally must be furnished the bargaining agent upon request, the Respondent urges that its refusal to supply the job descriptions was justified on various grounds, both factual and legal.

First, the Respondent urges that the 1954 descriptions were in fact inaccurate from the beginning and were never used for any purpose other than as a training device for new management personnel. While Personnel Manager Allee testified at one point that the 1954 job descriptions were not used for any purpose whatever and that the Respondent had gotten along fine without them, at another point in his testimony he admitted that several of the job descriptions were furnished the Union in connection with grievance discussions. In other grievance discussions, they were referred to but not given the Union according to Chambers' credited testimony. They were never destroyed. The Respondent would have the Trial Examiner believe in effect that the preparation of 1954 job descriptions, which was a tedious and time-consuming chore involving a tremendous amount of paperwork, was just an immense boondoggle. Under all the circumstances of the case, I cannot believe that the Respondent would spend all the time and money involved in preparing over 150 detailed job descriptions without any intention that they would be utilized for the purpose for which they were designed. Accordingly, I reject the Respondent's contention in this regard.

The Respondent further argues that the great bulk of the 1954 job descriptions were so inaccurate as to be wholly useless to the Union for any purpose and therefore were irrelevant to the relationship between the parties. I accept the Respondent's contention that there were inaccuracies in these descriptions and find that some of them were faulty in many respects. However, in my opinion, this fact does not relieve the Respondent of the obligation of furnishing them. As stated above, job descriptions are one of the types of information which the Act requires to be disclosed to enable the bargaining agent properly to perform his representative functions. The nature and extent of any inaccuracies in the Respondent's job descriptions, of course, may be disclosed to the Union.

Contrary to the Respondent's position, a job description which is not 100 percent accurate may nevertheless be of substantial utility to the bargaining agent, despite any minor inaccuracies.<sup>5</sup> The accurate portion of the description might be helpful to the bargaining agent in determining either that an employee had no legitimate grievance or in deciding to go ahead and process the grievance. And even where it is claimed that a job description is substantially inaccurate, they are not without use to the bargaining agent. To illustrate, let it be assumed that a controversy arises between the employer and the bargaining agent as to whether a certain job description is still accurate. The employee's statement of his duties might accord exactly with the statement on the job description. If the employer were permitted to withhold the description on the grounds that it was outdated, the bargaining agent would be deprived of whatever benefit might be derived from pointing out that the employer's own job description supported the bargaining agent's position in the controversy, rather than the employer's.

The Act contemplates that bargaining representatives shall have access to information of this kind in order to fully protect the interests of the employees. To leave the determination whether a job description is to be furnished up to the unilateral decision of the employer is inconsistent with the full disclosure of the basic facts affecting the employer-employee relationship envisaged by the Act. Granted that the furnishing of outdated job descriptions may inject complications into bargaining

<sup>3</sup> *Oregon Coast Operators Association, et al*, 113 NLRB 1338, 1345-1346, and cases therein cited.

<sup>4</sup> *J. I. Case Co. (Rock Island, Illinois)*, 118 NLRB 520, 521-522, enfd. 253 F. 2d 149, 152-154 (C.A. 7).

<sup>5</sup> At the hearing the Respondent's counsel urged "that unless a job description is 100 percent accurate, it is not a job description."

or grievance sessions; however, as long as the Respondent has the job descriptions and utilizes them for some purposes in dealing with the Union, it cannot release some and withhold others, depending upon its views as to the accuracy of the descriptions. Accordingly, I reject the Respondent's contention that the inaccuracies in the job descriptions rendered them irrelevant to the relationship between the parties.

The Respondent contends also that the Union waived its demand for job descriptions by entering into the 1959 agreement omitting the provision originally demanded by the Union that the Respondent furnish it with job descriptions. The Union did waive its demand for such a provision in writing upon the oral assurance of the Respondent that up-to-date accurate job descriptions would be furnished when completed. The consideration for the Union's giving up of the demand for such a contract provision was the understanding that such new job descriptions would be furnished within a reasonable time. When almost a year passed without such job descriptions having been furnished, this consideration failed. In this regard it is to be noted that it was not until after the filing of the charge in this case that the employee was hired by the Respondent to work on the job descriptions which had been promised the Union almost a year earlier. Under all the circumstances I find that the Union was fully warranted at this time in not waiting any longer and in pressing for the furnishing of the only descriptions then available, the 1954 descriptions. Respondent's waiver argument, I find, is without merit.<sup>6</sup>

The issue before me is the narrow one whether the Respondent's refusal to furnish the Union with the existing job descriptions when requested to do so in February 1960 violated the Respondent's bargaining obligations under Section 8(a)(5) of the Act.<sup>7</sup> As stated above, there is no controversy about the fact of the refusal; nor is there any controversy about the basic proposition of law applicable to this case. The Respondent has advanced various contentions as to why this proposition is not applicable under the circumstances of this case, which I have rejected for reasons set forth above. Accordingly, I conclude that the Respondent, in refusing to furnish the Union with its existing job descriptions when requested to do so in February 1960, has breached the obligation imposed by Section 8(a)(5) of the Act to supply information necessary to the proper functioning of the bargaining representative of its employees.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its business operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### V. THE REMEDY

Having found that the Respondent has violated Section 8(a)(5) of the Act by refusing in February 1960 to furnish the Union with the then existing job descriptions of the various job classifications in the appropriate unit, I shall require that the Respondent cease and desist from such unfair labor practice, and that it furnish the Union with said job descriptions if the Union hereafter makes a request for them. In view of the fact that the Respondent has, since the date of the unfair labor practice herein, furnished the Union with revised descriptions for most, if not all, of the job classifications here involved, I shall not require that the Respondent furnish the Union with copies of its 1954 job descriptions, unless a further request therefor is made of the Respondent by the Union. I shall also direct that the Respondent post the usual notices and furnish appropriate reports concerning compliance.

<sup>6</sup> The Respondent's contention that Section 10(b) (the 6 months' limitation) bars all proceedings in this case is wholly without merit. The charge was filed and served on March 2, 1960, less than a month after the acts complained of. The Respondent's theory apparently is that the violation, if any, occurred when the Union demanded a set of job descriptions in the January to March 1959 negotiations. However, as found hereinabove, this demand was disposed of without a refusal, by the Respondent's promise to furnish up-to-date descriptions when they were completed. The first outright refusal to furnish all the job descriptions occurred in the February 1960 grievance sessions and the charge was filed only a week or two thereafter.

<sup>7</sup> While the complaint alleges that the refusal commenced in December 1959, I find no evidence of a request for all of the job descriptions in December 1959, but only for those which were pertinent to the arbitration proceeding then pending.

## CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.
2. All the Respondent's hourly paid employees at its Chalmette Refinery, Arabi, Louisiana, excluding machine shop employees represented by Lodge No. 37, International Association of Machinists, guards, watchmen, and all supervisory employees, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
3. The Union on December 1, 1959, was, and all times thereafter has been, the exclusive bargaining representative of all employees in such unit for the purposes of collective bargaining.
4. By refusing to furnish the job descriptions requested by the Union in February 1960 the Respondent has refused to bargain collectively with the Union, thereby engaging in an unfair labor practice in violation of Section 8(a)(5) of the Act.
5. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

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**Mrs. Homer E. Ash and Bill H. B. Williams, a copartnership doing business as Ash Market and Gasoline and Retail Clerks International Association Local No. 1614, AFL-CIO. Case No. 19-CA-1923. February 23, 1961**

## DECISION AND ORDER

On May 19, 1960, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this proceeding to a three-member panel [Chairman Leedom and Members Rodgers and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

We agree with the Trial Examiner that on or about November 23, 1959, and, at all times thereafter, the Respondent has refused to bargain with the Charging Union as the representative of its employees in an appropriate unit in violation of Section 8(a)(5) and (1) of the Act.